

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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J. L. R.

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/440,903 11/16/99 BENNETT

P PACFI-001C1

 007663

QM12/1117

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 ART UNIT PAPER NUMBER

3727

FF 10

DATE MAILED: 11/17/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/440,903	BENNETT, PAUL H.
	Examiner Stephen K Cronin	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 July 2000 and 01 September 2000.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 31-48 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 31-48 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 20) Other: _____

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DETAILED ACTION

Inventorship

1. In view of the papers filed 7/5/00, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the addition of Thom M. Perlmutter as an inventor.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

Drawings

2. The drawings are objected to because the cross sections of figures 2, 3, 5-9, 13 and 14 contain improper hatching for a showing of the disclosed plastic material from which the closure is made. Correction is required. See MPEP 608.02.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 31-33, 36-38 and 41-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Merolle 2,326,480.

Merolle teaches a closure for a container comprising a container with a neck 15, a shoulder 17, and a screw thread 16, and a closure 1 with an inner cap 6, a seal 24, a screw thread 8, an outer cap 5 joined to the inner cap, a tamper indicating skirt with retaining means 19, rupture lines 21, 22, a tear strip 20 and a tab 23, which is structurally identical to the container and closure recited in the claims.

5. Claims 31, 33-36, 38-40, 41, 43, 45 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Menke 3,901,403.

Menke teaches a tear open tamper proof closure comprising a container with a neck 11, a shoulder and a screw thread, and a closure 14 with an inner cap 13, a seal and screw threads (not numbered), an outer cap 15a releasable joined to the inner cap, a tamper indicating skirt 15b with retaining means 19, a rupture line 26 and a tear strip with a tab 31 which is structurally identical to the container and closure set forth in the claims.

Response to Amendment

6. The terminal disclaimer filed on 7/5/00 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 5,711,443 has been reviewed and is accepted. The terminal disclaimer has been recorded.

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Response to Arguments

7. Applicant's arguments filed July 5, 2000 and September 1, 2000 have been fully considered but they are not persuasive.

In response to applicant's arguments directed to the drawing objection, see MPEP 608.02 for the correct hatching for a synthetic plastic material.

In response to applicant's argument that neither of the references of Merolle or Menke teach a closure "being sized and configured relative to the container such that movement of the sealing cap away from the shoulder results in engagement of the closure retaining section to the shoulder and the fracture of the parting region", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

It is further noted that the invention as "structurally" defined by the claims is the same as that taught by the prior art of Merolle and or Menke. Merolle and or Menke therefore are clearly capable of performing the claimed function. To state otherwise would imply that there is insufficient structure to support the claimed function and that

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applicant has failed to structurally claim his invention. If applicant continues to argue this point, the examiner will set forth an appropriate rejection under 35 USC 112 1st pg.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

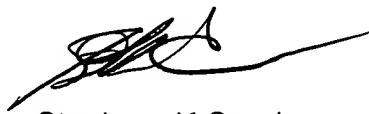
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen K Cronin whose telephone number is 703-308-4296. The examiner can normally be reached on M-TH 7:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Stephen K Cronin
Primary Examiner
Art Unit 3727

skc

November 15, 2000

ATTACHMENT TO AND MODIFICATION OF
NOTICE OF ALLOWABILITY (PTO-37)
(November, 2000)

**NO EXTENSIONS OF TIME ARE PERMITTED TO FILE
CORRECTED OR FORMAL DRAWINGS, OR A SUBSTITUTE
OATH OR DECLARATION, notwithstanding any indication to the
contrary in the attached Notice of Allowability (PTO-37).**

If the following language appears on the attached Notice of Allowability, the portion lined through below is of no force and effect and is to be ignored¹:

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to comply will result in ABANDONMENT of this application. ~~Extensions of time may be obtained under the provisions of 37 CFR 1.136(a)~~

Similar language appearing in any attachments to the Notice of Allowability, such as in an Examiner's Amendment/Comment or in a Notice of Draftperson's Patent Drawing Review, PTO-948, is also to be ignored.

¹ The language which is crossed out is contrary to amended 37 CFR 1.85(c) and 1.136. See "Changes to Implement the Patent Business Goals", 65 Fed. Reg. 54603, 54629, 54641, 54670, 54674 (September 8, 2000), 1238 Off. Gaz. Pat. Office 77, 99, 110, 135, 139 (September 19, 2000).